



UNITED STATES | ENGLAND | GERMANY | CHINA

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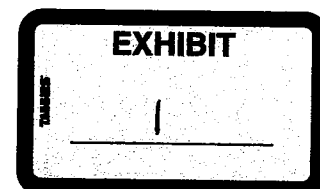
BY EMAIL

Re: State of Oklahoma v. Tyson Foods Inc.
Court File No. 05-cv-329-GKF(SAJ)
Our File No. 320833

Dear Mr. Garren:

We are in receipt of your recent service of the State of Oklahoma's Motion to Expand the Discovery Period and Integrated Brief in Support Thereof in the above-captioned matter. To be candid, we find both the submission and the timing of this motion (at least as to the Cargill defendants) to be very troubling for at least three reasons.

First, the motion reneges on the State's existing agreement with the Cargill defendants on this very subject. As you will recall, the temporal scope of plaintiffs' permitted discovery has been the subject of several prior motions, most prominently plaintiffs' motion to compel (Dkt. No. 1120). In Judge Joyner's Order of July, 2007 (Dkt. No. 1207), the Court specifically directed attorneys for the plaintiffs and the Cargill defendants to meet and confer further concerning the benefits and burdens of expanding the temporal scope of plaintiffs' discovery. The plaintiffs and the Cargill defendants met and conferred, as memorialized (for example) in Robert Nance's letter of July 10, 2007 to Theresa Hill and Ms. Hill's August 2, 2007 letter to Robert Nance and Trevor Hammons. In the course of discussions, the State specifically identified areas in which it sought temporally broader discovery and explained the reasons for those requests. The Cargill defendants examined those proposed reasons and, in every instance, agreed to the State's narrower request and produced older documents and information. In short, the parties compromised: plaintiffs narrowed their requests for older information to those subjects that they truly believed justified such discovery, and in exchange the Cargill defendants withdrew their objections to producing the older materials in response to those specific requests. Indeed, in the long course of this undeniably contentious litigation, this exchange between the plaintiffs' and the Cargill defendants' attorneys represents one of the parties' most successful



meet and confer efforts. Both sides approached the issue with a true spirit of compromise, and the parties were able to reach an agreement.

The plaintiffs' present motion, however, seeks to entirely undo that agreement. Having enjoyed the benefits of the additional information provided by the Cargill defendants as part of the parties' compromise in the meet-and-confer process, plaintiffs now seek to avoid the obligations they assumed on their side of the compromise by effectively changing the rules. This attempt to back out of the agreement once plaintiffs have already enjoyed the benefits of the agreement is unacceptable, and it threatens to undermine the credibility of plaintiffs' promises in any future similar situations.

Second, even if the Cargill defendants and the plaintiffs had not already reached an agreement on this issue, plaintiffs have utterly failed to comply with the requirement that they meet and confer with the Cargill defendants before bringing such a motion. As you are aware, Local Rule 37.1 provides in relevant part:

With respect to all motions or objections relating to discovery pursuant to Fed. R. Civ. P. 26 through 37 and 45, this Court shall refuse to hear any such motion or objection unless counsel for movant first advises the Court in writing that counsel personally have met and conferred in good faith and, after a sincere attempt to resolve differences, have been unable to reach an accord.

Plaintiffs' present motion is undeniably a motion "relating to discovery." Neither plaintiffs' motion or any other writing submitted to the Court, however, suggests that plaintiffs have made any attempt to meet and confer with the defendants. In fact, the Cargill defendants are aware of no such attempt, much less of any impasse encountered in the course of such an attempt. On the contrary, as noted above, the parties' earlier meet-and-confer sessions on this issue were very successful once the parties got down to the level of specific justifications for specific information. I would also note that any meaningful meet-and-confer process would necessarily involve an open exchange of information, including the specific factual basis and data underlying the cursorily stated conclusions in Shannon Phillips's affidavit.

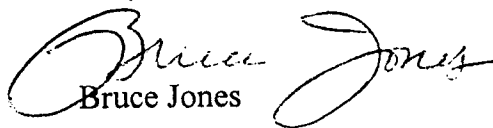
Third, the timing of the motion is both unfortunate and unnecessary. Because of (1) the plaintiffs' delay in bringing their motion for preliminary injunction and (2) the supposed urgency of that motion from the plaintiffs' point of view, the Cargill defendants and the other defendants are engaged in an intensive effort to meet the variety of legal and factual arguments raised in the plaintiffs' PI motion, including responses to nine separate, previously undisclosed experts, by the February 19, 2008 hearing on the plaintiffs' motion. The plaintiffs have now dropped into this mix an additional motion to expand the temporal scope of discovery, a motion accompanied by yet another previously undisclosed expert, and addressing an issue that Judge Joyner himself noted will probably require its own evidentiary hearing. Whether intentional or not—and we see little point in debating that issue—the effect of this new motion would be to distract the defendants from their efforts to prepare for the preliminary injunction hearing.

There is no urgency to the plaintiff's temporal scope motion; on the contrary, the issue has sat dormant for nearly six months since the Cargill defendants and the plaintiffs reached their existing agreement late last summer. Conversely, the motion by its nature has nothing whatever to do with the plaintiffs' motion for preliminary injunction. The preliminary injunction motion addresses purported current poultry litter practices, while the motion concerning temporal scope seeks to address practices in the distant past. In a nutshell, there is simply no need for the parties or the Court to be distracted by this motion at this time.

In light of these three factors, we ask that you withdraw the motion to expand the scope of discovery as to the Cargill Defendants. At a minimum, we urge you to postpone the motion until after the evidentiary hearing on the motion for preliminary injunction and until after plaintiffs have complied with the requirement to meet and confer. If we do not receive confirmation of such a withdrawal by the close of business on January 2, 2008, I expect that one or more the defendants will bring a motion to strike this motion from the calendar.

We look forward to your response.

Very truly yours,


Bruce Jones

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cc: All Defense Counsel of Record